

The party may be arraigned for prison breaking before he is convicted of the crime for which he was imprisoned, 2 Hawk. P. C. 127. If he has been acquitted of the felony for which he was imprisoned, he is not afterwards to be indicted for the prison breach, and on the other hand if he be indicted for the latter, and is afterwards acquitted of the principal felony, he may plead this acquittal in bar to the indictment for breaking prison, 1 Hale P. C. 612.

The indictment to bring the prisoner within the Statute must set out his case so as to show that he was lawfully in prison and for a felony, 2 Hawk. P. C. *supra*. And it is not enough to say generally that such a person "feloniously broke prison," but as Lord Coke says, 2 Inst. 591, the indictment ought to rehearse the specialty of the matter, that he being imprisoned for such and such a felony broke the prison, &c.

Prison-breaking is a common law felony, and punishable as such, see R. v. Haswell *supra*. By the Act of 1809, ch. 138, sec. 32, any offender, sentenced to the penitentiary, escaping from it, shall on conviction suffer such additional confinement and hard labor, and such corporal punishment not extending to life or limb, as the Court, &c., shall direct, and by the succeeding Section, any keeper or other person wilfully aiding therein shall be confined in the penitentiary for not more than fifteen years. *These Sections are substantially re-enacted in the Code, Art. 30, sec. 160 51,² but the part relating to corporal punishment is omitted, and the time of confinement of aiders in such escape is made not less than eighteen months nor more than ten years.

The rescue of or forcibly freeing another from arrest or imprisonment is in most instances of the same nature as the offence of prison-breaking.

² Code 1904, Art. 27, sec. 111.

THE STATUTE OF CARLISLE,

Made Anno 15 Edw. II, and A. D. 1322.

The Conusor of a Fine shall come personally before the Justices. Where a Commission shall be awarded to take a Fine. Who may admit Attorneys.

The first part of this Statute relates to Fines, and is not in force.

(5) And we will not that any of our Barons of the Exchequer, or our Justices, shall admit any Attorneys, but only in Pleas that pass afore them in the Benches, and in Places